

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 14, 2005 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 561, HB 598, 2/7/2005
Executive Action: HB 577-Do Pass, HB 598-Do Pass

HEARING ON HB 598

Sponsor: REP. DAVE GALLIK, HD 79, HELENA

Opening Statement by Sponsor:

REP. DAVE GALLIK (D), HD 79, opened the hearing on HB 598, Revise dates applicable to selection of trial juries.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 30}

Proponents' Testimony:

Mary Phippen, Montana Association of Clerks of Court, rose in support of HB 598. Ms. Phippen stated that the clerks would not be able to implement this current statute on October 1, 2005, therefore, would like the date extended to October 1, 2007.

{Tape: 1; Side: A; Approx. Time Counter: 30 - 42}

Elaine Grandy, director-Information Technology, Secretary of State, rose to support HB 598 and to explain to the committee members that the Information Technology department would not be ready until sometime in 2006.

{Tape: 1; Side: A; Approx. Time Counter: 42 - 49}

Brenda Nordlund, Motor Vehicle Division-Assistant Attorney General, rose in support of HB 598. She informed the committee that the voter lists are derived from the Driver's License data base.

{Tape: 1; Side: A; Approx. Time Counter: 49 - 57}

Robert Throssell, Montana Association of Clerks and Recorders, rose in support and stated would eliminate the error of duplication.

{Tape: 1; Side: A; Approx. Time Counter: 57 - 66}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. EVERETT queried the sponsor whether or not a person is required to be a U.S. citizen to be able to serve on a jury.

REP. GALLIK responded that you need to be a citizen. The next question was if an illegal alien could serve on a jury; the answer was no.

REP. BECKER was interested in knowing if the computer problems were due to a lack of resources and what has been done so far. **Mr. Greg Noose, Motor Vehicle Division-Department of Justice,** rose to answer this line of questions. **Mr. Noose** stated that efforts have been made but the driver's license information is different from the voter's registry information. He further stated that all of this takes time and the goal is not to have a duplication of the lists.

{Tape: 1; Side: A; Approx. Time Counter: 66 - 150}

Closing by Sponsor:

REP. GALLIK closed the hearing on HB 598.

{Tape: 1; Side: A; Approx. Time Counter: 150 - 157}

HEARING ON HB 561

Sponsor: **REP. JOEY JAYNE, HD 15, ARLEE**

Opening Statement by Sponsor:

REP. JOEY JAYNE (D), HD 15, opened the hearing on **HB 561,** Abolish death penalty. The REPRESENTATIVE proceeded to explain to the committee members the difference between this bill and current statutes.

REP. JAYNE stated, "...should we as Montanans take [a] life purposefully and knowingly...." She further informed that homicide is written on the death certificate as "cause of death." The REPRESENTATIVE continued by saying that Iran, Iraq and China continue to have the death penalty; ..."do we in Montana want to be in the same category as they are."

REP. JAYNE had previously taped out a five foot by eight foot space on the floor of the committee hearing room to represent the area of space where the inmate lives.

She informed the committee that currently there are four men on death row in Montana and finished her opening by stating that the death penalty is racially inequitable, not cost effective and not due process under the law.

{Tape: 1; Side: A; Approx. Time Counter: 157 - 275}

Proponents' Testimony:

Bishop George Thomas, Helena Diocese-Catholic Church, rose to support HB 561 and to speak to the committee members about the time he spent as the chaplain for the King County jail in Seattle.

Bishop Thomas continued to speak about the Catholic teachings, higher moral ground and how he supports punishment for the crimes committed. In his closing statement, the Bishop stated, "...retribution or vengeance does not heal...."

[EXHIBIT\(juh36a01\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 275 - 381}

John Sheehy, retired Judge-Montana Supreme Court, rose to support HB 561. **Mr. Sheehy** stated that he served on the House Judiciary committee from 1959-1965; and also served on the Senate Judiciary Committee from 1969-1971.

While he was a private attorney, **Mr. Sheehy** stated that he had represented and defended two murder cases; one person "turned" state witness and received 35 years in the Montana State Prison while the other person received the death penalty. He continued to speak about the defaults and defects in the death penalty proceedings and that Montana does not have a good history with regard to the death penalty.

{Tape: 1; Side: A; Approx. Time Counter: 381 - 470}

Eve Malo, Murder Victim's Family for Human Rights (MVFHR), rose in support of HB 561. She spoke to the committee about her family's tragedy where her uncle had murdered her grandmother. She stated that all of the family is a victim.

{Tape: 1; Side: A; Approx. Time Counter: 470 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 24}

Rachel King, ACLU, Capital Punishment Project, rose in support of HB 561. **Ms. King** informed the committee that in the United States during the "modern death penalty era," there have been just less than 950 executions and 117 exonerations of innocent people from death row. Further, for every eight executions there has been one exoneration.

Ms. King stated that New Mexico, New York and Kansas are considering repealing the death penalty in their states and New Jersey, Illinois, North Carolina and other states currently have moratoriums on the death penalty. She continued to speak to the committee about the various reasons why Montana should abolish the death penalty.

[EXHIBIT\(juh36a02\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 24 - 75}

Ron Waterman, attorney, rose in support of HB 561. **Mr. Waterman** spoke to the committee about his representation of Duncan McKenzie in 1993 who was executed 10 years ago in May.

He continued to speak about the racial disparity of inmates on death row and the fact that approximately 80% of those inmates suffered early childhood abuse. These inmates have a lack of empathy for their victims; i.e., they are incapable of feeling the pain of others, they have an inability to connect and usually come from poor economic backgrounds.

Mr. Waterman then spoke to the committee about the cost benefit analysis and how the costs are doubled during death penalty trials: from the original trial, to the appellate trial, to the Montana Supreme Court and finally to the U.S. Supreme Court. He spoke of his client, Duncan McKenzie, whose case went before the U.S. Supreme Court four times and that the expense at completion was more than \$2 million. **Mr. Waterman** finished his testimony by stating that the death penalty is not a deterrent.

EXHIBIT(juh36a03)

{Tape: 1; Side: B; Approx. Time Counter: 75 - 217}

Marietta Jaeger-Lane, Murder Victim's Family for Human Rights, rose in strong support for HB 561. She related for the committee the story of her daughter's murder 30 years ago. **Ms. Jeager-Lane** explained to the members how she was able to ask for a life sentence instead of the death penalty for her daughter's murderer. She stated that in her opinion, vindictiveness breeds and makes more victims. **Ms. Jeager-Lane** concluded her testimony by stating, "To kill for my daughter is to violate the goodness and sweetness of her life."

{Tape: 1; Side: B; Approx. Time Counter: 217 - 363}

Father Jay Peterson, Montana Association of Churches, spoke in support of HB 561.

EXHIBIT(juh36a04)

{Tape: 1; Side: B; Approx. Time Counter: 363 - 385}

Terry Kendrick, Montana Human Rights Network, rose in support of HB 561 and stated, "...society must be bigger than the death penalty."

{Tape: 1; Side: B; Approx. Time Counter: 385 - 414}

Gloria Hermanson, ACLU, rose to support HB 561.

{Tape: 1; Side: B; Approx. Time Counter: 414 - 422}

Opponents' Testimony:

Doug Nulle, self, rose in opposition to HB 561. He spoke to the committee about the circumstances where the death penalty is applicable such as, death of a police officer or an attorney general during the performance of their duties. **Mr. Nulle** then described the various ways inmates can fashion weapons to kill other inmates, the corrections' officers and others in prison.

{Tape: 1; Side: B; Approx. Time Counter: 422 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 35}

REP. JANNA TAYLOR, HD 11, rose in opposition to HB 561. She spoke on the behalf of a former legislator, Senator Ethel Harding, who was the mother of Lana Harding, who was murdered in 1995. **REP. TAYLOR** stated that Ethel Harding has found peace in knowing that her daughter's murderer will not murder again.

{Tape: 2; Side: A; Approx. Time Counter: 35 - 80}

Informational Testimony:

John Connor, Chief Criminal Prosecutor-Attorney General, informed the committee that he is the Supervisor of the Special Prosecutor in the Attorney General's Office and has defended and prosecuted more homicide cases that he can remember handling. **Mr. Connor** had prosecuted two of the four inmates currently on death row, and had prosecuted the two inmates that committed suicide. He did inform the committee that Montana does not have a "death row" per se; its unit is called the maximum security unit.

{Tape: 2; Side: A; Approx. Time Counter: 80 - 107}

Questions from Committee Members and Responses:

REP. SONJU asked Mr. Connor about the people who work at Montana State Prison (MSP), especially the ones who work within "death row" and the executions. He then inquired of Mr. Connor the average time someone is on death row. **Mr. Connor** stated, "...that of the six men on death row: two have been ten years, one is twenty years, one is nineteen years, one is twenty-three and the last is thirteen years."

REP. WARD then asked Bishop Thomas some questions. He was interested in knowing why Bishop Thomas was not here for previous bills, such as the "fetal pain" bill and asked the question; "...what is more important, innocent lives or criminal lives." **Bishop Thomas** replied, "...there is no moral equivalence, it is not one against the other."

REP. MCGILLVRAY continued the questioning of Bishop Thomas and asked about the Pope and the church's stance on the death penalty. **Bishop Thomas** spoke of the address that Pope John Paul gave in St. Louis that was a moral turning point for the Roman Catholic Bishops in the nation.

The Bishop explained formal Catholic teachings that express, "The State has the right to take human life in the most egregious cases; however, Pope John Paul declared that the various States and the nation have developed the technologies to safely confine violent criminals and therefore produce public safety for the nation and state." Pope John Paul now has mandated, "...we must choose non-lethal means now that they are available." **Bishop Thomas** put forth, "...that was a watershed speech that the Pope gave in St. Louis."

REP. WILSON began his questioning of Mr. Connor regarding the guards at MSP; if they get injured and how secure the guards are at MSP. **Mr. Connor** replied that the inmates in maximum security are housed 23 hours a day with one hour allowed out of their cells for exercise. The guards do transport the inmates to the showering facilities, for their security and any other daily needs.

REP. NOONAN and Bishop Thomas discussed the state's right to impose the death penalty, the concept of restorative justice and the actual conversion of an inmate's "heart" while incarcerated.

REP. KOOPMAN continued the questioning of Bishop Thomas regarding the inmates who do want to die. **Bishop Thomas** stated, "...homicide and suicide are both morally wrong." The REPRESENTATIVE spoke of the strong biblical teachings; i.e., "eye for eye," etc. The Bishop stated that there is a refinement and evolution of teachings and thought that has occurred for all time regarding the biblical teachings.

REP. KOOPMAN then queried the Bishop about the cruel and unusual punishment imposed on the inmate in reference to the cell size. (That had been demonstrated by the taped-out portion of the room.) **Bishop Thomas** responded by saying, "We should look at the crime of which an inmate is incarcerated for and compare that to the punishment; the punishment is not commensurate to that crime."

REP. WARD began another discussion with Bishop Thomas about what is referred to as "quit the club" or Lata Sentenia. These are acts committed by a person that would demand the excommunication of that person from the Catholic Church.

REP. WARD was asking these questions in reference to inmates on "death row" in MSP.

REP. RICE questioned Mr. Connor about the Department of Justice's (DOJ) position on the death penalty. **Mr. Connor** stated that the DOJ works with the county attorney that is involved to determine if there are aggravated circumstances that would warrant the death penalty. Then the county attorney and the DOJ work with the victim's family. The REPRESENTATIVE and Mr. Connor discussed the racial disparity that is alleged to occur in death penalty convictions.

REP. CLARK had his opportunity to speak with Mr. Connor; they discussed the finding of new evidence in relation to a finding of innocence and new DNA evidence that may exonerate an inmate.

REP. NOENNIG and Mr. Connor discussed the jury involvement in cases for imposition of the enhanced penalty. **Mr. Connor** stated that the prosecution must prove aggravating facts such as in the MCA 46-1-401. He also stated that the Montana law is the same as federal law.

{Tape: 2; Side: A; Approx. Time Counter: 107 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 124}

Closing by Sponsor:

REP. JAYNE stated that this bill would provide several things:

- 1) Justice for the family.
- 2) Security for the public.
- 3) Give inmates a time to repent.
- 4) Costs will decrease for the judicial system.

She stated that the death penalty is the least effective deterrent for committing crimes.

(This exhibit was handed in at the conclusion of hearing of HB 561.)

EXHIBIT(juh36a05)

{Tape: 2; Side: B; Approx. Time Counter: 124 - 220}

Please Note: The following "Action on Committee Bills" is not Executive Action. These are possible bills that may be drafted at some point or drafts that the House Judiciary Committee as a whole would like to present.

ACTION ON COMMITTEE BILL

Motion: REP. WARD proposed a COMMITTEE BILL.

Discussion:

REP. WARD explained to the committee members that this bill will rededicate the statue of T. Meagher through a "Special Order."

[EXHIBIT\(juh36a06\)](#)

Mr. MacMaster further explained the procedure for "Special Orders of the Day" which is the order of business #11 for the House Floor.

Motion/Vote: REP. NOENNIG moved that COMMITTEE BILL DO PASS.

Motion carried unanimously by voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 220 - 300}

ACTION ON COMMITTEE BILL

Motion: REP. SONJU proposed a COMMITTEE BILL.

Discussion:

REP. SONJU explained that this would prohibit enactment of a standardized birth certificate. The committee discussed this bill and agreed to the language which "would be directed to both houses of congress to not impose on states [the] standardization of birth certificates."

Vote: The motion carried unanimously by voice vote. (REP. PARKER voted by proxy vote.)

{Tape: 2; Side: B; Approx. Time Counter: 300 - 500}

ACTION ON COMMITTEE BILL

Motion: REP. WARD proposed a COMMITTEE BILL.

Discussion:

This bill is in reference to Exhibit 7: Page 2, Line 9 "clandestine labs." This will coordinate language within another bill that has yet to be drafted.

[EXHIBIT\(juh36a07\)](#)

Vote: The motion by voice vote 16-2 with REP CLARK, REP. GUTSCHE voting no. (REP. PARKER voted by proxy vote.)

{Tape: 3; Side: A; Approx. Time Counter: 0 - 147}

EXECUTIVE ACTION ON HB 598

Motion/Vote: REP. STOKER moved that HB 598 DO PASS. Motion carried unanimously by voice vote.
(REP. PARKER voted by proxy vote.)

Motion/Vote: REP. WINDHAM moved that HB 598 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously by voice vote.
{Tape: 3; Side: A; Approx. Time Counter: 147 - 172}

EXECUTIVE ACTION ON HB 577

Motion: REP. STOKER moved that HB 577 DO PASS.

Discussion:

There was some discussion by the committee members about the possibility of a "slush fund" be created by this bill.

Vote: Motion carried unanimously by voice vote.
(REP. PARKER voted by proxy vote.)
{Tape: 3; Side: A; Approx. Time Counter: 172 - 225}

ADJOURNMENT

Adjournment: 11:30 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh36aad0.PDF](#))